

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARIA LASTRA,

Plaintiff,

vs.

PHH MORTGAGE CORP F/K/A
CENDANT MORTGAGE, et al.,

Defendants.

CASE NO. 10cv2573-LAB (BLM)

**ORDER RE: REQUEST TO
AMEND NOTICE OF REMOVAL;
AND**

**ORDER DENYING MOTION TO
REMAND**

Defendant Clayton Goff removed this action from state court on December 15, 2010, citing diversity jurisdiction. On December 27, PHH filed a motion for judgment on the pleadings, scheduled for hearing on February 22, 2011. On January 10, Lastra filed her amended motion to remand, with the same hearing date.

I. Amendment of Notice of Removal

The notice of removal points out the complaint sought over \$75,000 in damages, and alleged Lastra is a resident of California, Goff is a citizen of Texas,¹ and PHH is a New Jersey corporation.

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¹ Defendants alleged Goff's residency and citizenship in the notice of removal (Notice of Removal, 2:4), and reiterated it in their opposition to the notice for remand.

1 In their opposition to the motion for remand, Defendants admitted they had failed to
 2 allege PHH's principal place of business. They now request leave to amend the notice of
 3 removal to say that PHH is a citizen of New Jersey only, because it has both its principal
 4 place of business there and is incorporated there. Lastra didn't oppose this request, but in
 5 fact admitted it in her motion for remand. (Mot. to Remand, ¶ 5). The request is **GRANTED**.
 6 The notice of removal is **DEEMED AMENDED** to clarify that PHH is a citizen of New Jersey.

7 It is also apparent Defendants intended to allege Lastra is a citizen of California
 8 (rather than merely a resident), though they have not formally done so.² Lastra's own
 9 pleadings also strongly suggest Lastra is a citizen of California, since she resides here and
 10 intends to continue residing here indefinitely. (Mot. to Remand, ¶¶ 4, 34.)

11 Defendants may, no later than the close of business on **March 3, 2011**, file an ex
 12 parte motion to deem the notice of removal amended to allege Lastra is a citizen of
 13 California.

14 **II. Motion to Remand**

15 Lastra's motion to remand is focused on the absence of a federal question in the
 16 complaint, the injustice she says she has suffered, and the indignity Lastra alleges the state
 17 court suffered by Defendants' violation of its injunction. It also points to evidence Lastra
 18 believes suggests Goff is really a California citizen.³ And it cites rules, statutes, and
 19 precedents pertaining to jurisdiction. But none of this shows removal was improper.

20 Lastra hasn't shown removal was untimely or that the Court lacks jurisdiction. The
 21 fact that the Court can't exercise federal question jurisdiction doesn't mean it can't exercise
 22 jurisdiction under some other valid provision of law. Assuming (as appears to be the case)
 23 Lastra is a California citizen, the Court can exercise diversity jurisdiction pursuant to 28
 24 U.S.C. 1332. Because Defendants are non-citizens of the forum state, Goff could remove

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 26 ² Technically, it is necessary to allege citizenship, not merely residency. *Snell v.*
 27 *Cleveland, Inc.*, 316 F.3d 822, 824 (9th Cir. 2002). It is apparent, however, Defendants
 intend to allege Lastra is not only a resident but also a citizen of California (see *id.* at 23
 (Civil Cover Sheet, identifying Plaintiff as a citizen of California)).

28 ³ Lastra points out Goff is licensed to practice law in California, not Texas. But that
 doesn't show Goff isn't a Texas citizen, or that he is a California citizen.

1 this action with PHH's consent pursuant to 28 U.S.C. §§ 1441 and 1446, which is what he
2 did.

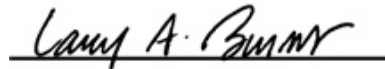
3 The motion for remand is therefore **DENIED WITHOUT PREJUDICE**. Should
4 Defendants fail to show Lastra is a California citizen within the time permitted, however, the
5 Court will reconsider its decision and this action will be remanded.

6 **III. Motion for Judgment on the Pleadings**

7 The Court will reserve judgment on Defendants' unopposed motion for judgment on
8 the pleadings until it is clear the Court has jurisdiction to reach the merits.

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10 **IT IS SO ORDERED.**

11 DATED: February 28, 2011

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13 **HONORABLE LARRY ALAN BURNS**
14 United States District Judge
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